

§ 34.7

disabilities an equal opportunity to participate in, and enjoy the benefits of, the JTPA-funded program or activity. In determining what type of auxiliary aid or service is necessary, such recipient shall give primary consideration to the requests of the individual with a disability.

(c) Where a recipient communicates with beneficiaries, applicants, eligible applicants, participants, applicants for employment and employees by telephone, telecommunications devices for individuals with hearing impairments (TDDs), or equally effective communications systems shall be used.

(d) A recipient shall ensure that interested persons, including persons with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.

(e) A recipient shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(f) This section does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

(1) In those circumstances where a recipient believes that the proposed action would fundamentally alter the JTPA-funded program, activity, or service, or would result in undue financial and administrative burdens, such recipient has the burden of proving that compliance with this section would result in such alteration or burdens.

(2) The decision that compliance would result in such alteration or burdens must be made by the recipient after considering all resources available for use in the funding and operation of the JTPA-funded program, activity, or service and must be accompanied by a written statement of the reasons for reaching that conclusion.

(3) If an action required to comply with this section would result in such an alteration or such burdens, the re-

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cipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient.

§ 34.7 Employment practices.

(a) As used in this part, the term “employment practices” includes, but is not limited to, recruitment or recruitment advertising, selection, placement, layoff or termination, upgrading, demotion or transfer, training, participation in upward mobility programs, rates of pay or other forms of compensation, and use of facilities and other terms and conditions of employment.

(b) Discrimination on the ground of race, color, religion, sex, national origin, age, disability, or political affiliation or belief is prohibited in employment practices in the administration of, or in connection with, any JTPA-funded program or activity.

(c) *Employee selection procedures.* In implementing this section, a recipient shall comply with the Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60-3.

(d) *Standards for employment-related investigations and reviews.* In any investigation or compliance review, the Director shall consider EEOC regulations, guidelines and appropriate case law in determining whether a recipient has engaged in an unlawful employment practice.

(e) As provided in § 34.1(c)(2) of this part, this rule does not affect in any way the obligation of recipients to comply with subparts B and C and appendix A of 29 CFR part 32, implementing the requirements of section 504 pertaining to employment practices and employment-related training, program accessibility, and accommodations. Therefore, this section should not be understood to constitute an exhaustive list of employment-related nondiscrimination and equal opportunity obligations on the ground of disability.

(f) Recipients that are also employers covered by titles I and II of the ADA should be aware of obligations imposed

pursuant to those titles. See 29 CFR part 1630 and 28 CFR part 35.

(g) This rule does not preempt consistent State and local requirements.

§ 34.8 Intimidation and retaliation prohibited.

A recipient shall not discharge, intimidate, retaliate, threaten, coerce or discriminate against any person because such person has: filed a complaint; opposed a prohibited practice; furnished information; assisted or participated in any manner in an investigation, review, hearing or any other activity related to administration of, or exercise of authority under, or privilege secured by, the nondiscrimination and equal opportunity provisions of JTPA or this part; or otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of JTPA or this part. The sanctions and penalties contained in section 167 of JTPA or this part may be imposed against any recipient that engages in any such proscribed activity or fails to take appropriate steps to prevent such activity.

§ 34.9 Designation of responsible office; rulings and interpretations.

(a) The Directorate of Civil Rights (DCR), in the Office of the Assistant Secretary for Administration and Management, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions of JTPA and this part and for developing and issuing policies, standards, guidelines and procedures for effecting compliance.

(b) The Director shall make any rulings under or interpretations of the nondiscrimination and equal opportunity provisions of JTPA or this part.

§ 34.10 [Reserved]

§ 34.11 Effect of other obligations or limitations.

(a) *Effect of State or local law or other requirements.* The obligation to comply with the nondiscrimination and equal opportunity provisions of JTPA or this part shall not be obviated or alleviated by any State or local law or other requirement that, on a prohibited ground, prohibits or limits an individ-

ual's eligibility to receive services, compensation or benefits, to participate in any JTPA-funded program or activity, or to be employed by any recipient, or to practice any occupation or profession.

(b) *Effect of private organization rules.* The obligation to comply with the nondiscrimination and equal opportunity provisions of JTPA and this part shall not be obviated or alleviated by any rule or regulation of any private organization, club, league or association that, on a prohibited ground, prohibits or limits an individual's eligibility to participate in any JTPA-funded program or activity to which this part applies.

(c) *Effect of the availability of employment opportunities.* The availability of future employment opportunities, or lack thereof, in any occupation or profession for qualified individuals with disabilities or persons of a certain race, color, religion, sex, national origin, age, political affiliation or belief, or citizenship shall not be considered in recruiting, selecting or placing individuals in programs or activities.

§ 34.12 Delegation and coordination.

(a) The Secretary may from time to time assign to officials of other departments or agencies of the Government (with the consent of such department or agency) responsibilities in connection with the effectuation of the nondiscrimination and equal opportunity provisions of JTPA and this part (other than responsibility for final decisions pursuant to § 34.42), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of the nondiscrimination and equal opportunity provisions of JTPA or this part to similar programs and similar situations.

(b) Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Director.

(c) Whenever a compliance review or complaint investigation under this